

**AGREEMENT FOR PROFESSIONAL SERVICES AND MANAGEMENT SYSTEM FOR  
PLATTING AND HISTORICAL PRESERVATION PROCESSES**

**THIS AGREEMENT FOR PROFESSIONAL SERVICES AND MANAGEMENT SYSTEM FOR  
PLATTING AND HISTORICAL PRESERVATION PROCESSES** (“Agreement”) is made on the  
Countersignature Date by and between the **CITY OF HOUSTON, TEXAS** (the “City”), a Texas Home  
Rule City of the State of Texas principally situated in Harris County, and \_\_\_\_\_  
 (“Contractor”), a \_\_\_\_\_ doing business in Texas.

**1. PARTIES**

**1.1. Addresses**

1.1.1. The initial addresses of the Parties, which one party may change by giving written notice of its  
changed address to the other party, are as follows:

City  
Director  
Planning and Development Department

Contractor

\_\_\_\_\_  
Houston, TX \_\_\_\_\_

The Parties agree as follows:

*[Remainder of Page Intentionally Left Blank]*

**1.2. Table of Contents**

1.2.1. This Agreement consists of the following sections:

	<b><u>Page</u></b>
1. PARTIES .....	1
1.1. Addresses .....	1
1.2. Table of Contents .....	2
1.3. Parts Incorporated.....	4
1.4. Controlling Parts.....	4
1.5. Signatures .....	5
2. Definitions.....	6
3. Duties of Contractor.....	7
3.1. Scope of Services .....	7
3.2. Coordinate Performance .....	7
3.3. Schedule of Performance.....	7
3.4. Reports .....	8
3.5. Prompt Payment of Subcontractors.....	8
3.6. Personnel of Contractor .....	8
3.7. RELEASE.....	8
3.8. INDEMNIFICATION .....	8
3.8. SUBCONTRACTOR’S INDEMNITY .....	10
3.9. INDEMNIFICATION PROCEDURES.....	10
3.10. Insurance .....	11
3.11. Warranties .....	12
3.12. Ownership and Return of City Data .....	13
3.13. Confidentiality and Data Security .....	14
3.14. Use of Work Products.....	16
3.15. Licenses and Permits .....	16
3.16. Compliance with Laws .....	16
3.17. Compliance with Equal Opportunity Ordinance.....	16
3.18. Drug Abuse Detection and Deterrence .....	16
3.20. Pay or Play .....	18
4. Duties of The City.....	19
4.1. Payment Terms .....	19
4.2. Expense and Reimbursement.....	19
4.3. Taxes.....	19
4.4. Method of Payment.....	19

## SAMPLE AGREEMENT – SUBJECT TO CHANGE

4.5.	Disputed Payments.....	20
4.6.	Limit of Appropriation.....	20
4.7.	Suspension of Performance.....	20
4.8.	Changes.....	21
4.9.	Access to Data.....	22
4.10.	No Quantity Guarantee .....	22
5.	Term and Termination .....	22
5.1.	Term .....	22
5.2.	Renewal.....	22
5.3.	Termination for Convenience by the City .....	23
5.4.	Termination for Cause by City.....	23
6.	Miscellaneous .....	24
6.1.	Independent Contractor.....	24
6.2.	Force Majeure .....	24
6.3.	Severability .....	25
6.4.	Entire Agreement.....	25
6.5.	Written Amendment.....	25
6.6.	Governing Law and Venue .....	25
6.7.	Notices .....	25
6.8.	Captions .....	25
6.9.	Non-Waiver .....	25
6.10.	Inspections and Audits .....	26
6.11.	Enforcement .....	26
6.12.	Ambiguities.....	26
6.13.	Survival.....	26
6.14.	Publicity .....	26
6.15.	Risk of Loss.....	26
6.16.	Acceptance and Approvals.....	26
6.17.	Parties in Interest.....	27
6.18.	Successors and Assigns .....	27
6.19.	Business Structure and Assignments .....	27
6.20.	Remedies Cumulative .....	27
6.21.	CONTRACTOR DEBT.....	27

Exhibits

Exhibit A – Scope of Services

Exhibit B – Drug Policy Compliance Agreement

Exhibit C – Contractor’s Certification of No Safety Impact Positions in Performance of a City Contract

Exhibit D – Drug Policy Compliance Declaration

**1.3. Parts Incorporated**

1.3.1. The above-described exhibits are incorporated into this Agreement.

**1.4. Controlling Parts**

1.4.1. If a conflict among the sections and exhibits arises, the sections control over the exhibits.

*[Remainder of Page Intentionally Left Blank]*

**SAMPLE AGREEMENT – SUBJECT TO CHANGE**

**1.5. Signatures**

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

CONTRACTOR

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Tax Id. No. \_\_\_\_\_

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS  
Signed by:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

APPROVED:

COUNTERSIGNED BY:

\_\_\_\_\_  
Director, Planning & Development  
Department

\_\_\_\_\_  
City Controller

\_\_\_\_\_  
Chief Procurement Officer

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

\_\_\_\_\_  
Assistant City Attorney  
L.D. File No. \_\_\_\_\_

## **SAMPLE AGREEMENT – SUBJECT TO CHANGE**

### **2. DEFINITIONS**

As used in this Agreement, the following terms have the meanings set out below:

- 2.1. “Acceptance” means the act of Director by which the City assumes for itself, approval of specific services, as partial or complete performance of the Contract.
- 2.2. “Agreement” means this agreement between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
- 2.3. “Business Day” means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City (as designated by City Council).
- 2.4. “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.5. “City’s Information” means all data, Documents, information, electronically stored information, agendas, reports, notes, meeting minutes, records, or documents provided to, entered in, posted, transmitted, stored, hosted, received, collected, or processed by Contractor on behalf of the City or any software, databases, or applications developed by Contractor for the City and provided by Contractor, and any Documents that Contractor may have access to in connection with this Agreement.
- 2.6. “Contractor” is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.7. “Correction” means the elimination of a defect.
- 2.8. “Countersignature Date” means the date the City Controller countersigns this Agreement.
- 2.9. “Day(s)” or “day(s)” means City Business Days, unless otherwise defined in this Agreement.
- 2.10. “Deliverables” means any services, products, goods, software, case management, Documents, or other tangible item provided by Contractor to the City in connection with this Agreement.
- 2.11. “Department” means City of Houston Planning and Development Department.
- 2.12. “Director” means the Director of the City of Houston Planning and Development Department or the person he or she designates.
- 2.13. “Documents” means any analyses, audio and video recordings, charts, computations, computer programs, correspondence, data or data compilations, databases and diskettes, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, inventions, items, letters, manuals, maps, materials, models, notebooks, notes, operating manuals, original tracings of all drawings and plans, photographs, plans, policies, procedures, records, reports, social media communications, software, sound recordings, specifications, tabulations, underlying data, writings, and other work products (and any modifications or improvements to them) that Contractor prepares, obtains, modified, creates, or provides to or for the City pursuant to or in connection with this Agreement.
- 2.14. “Include” and “including,” and words of similar import, shall be deemed to be followed by the

## **SAMPLE AGREEMENT – SUBJECT TO CHANGE**

words “without limitation.”

- 2.15. “Notice to Proceed” means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance under this Agreement.
- 2.16. “Parties” means all the entities set out in the Preamble who are bound by this Agreement.
- 2.17. “Work Products” mean all Documents that Contractor prepares, creates, develops, modifies, prepares, produces, or writes under, pursuant to, or in connection with this Agreement. “Work Products” does not mean or include the Software subject to the Licenses granted to the city under this Agreement.
- 2.18. “Writing” or “written” shall mean a written communication from one Party to the other, including an electronic communication or e-mail.

### **3. DUTIES OF CONTRACTOR**

#### **3.1. Scope of Services**

- 3.1.1. In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform professional services, maintenance services and technical support, and to provide technological solutions and Deliverables to redesign and streamline the City’s platting and historical preservation processes, as more specifically described in **Exhibit A**. Contractor shall provide other related services and Deliverables requested by the Director and agreed upon by Contractor for which funds are available. These services and Deliverables may be provided or performed as authorized, subject to the Allocated Funds provision in Section 4.6.

#### **3.2. Coordinate Performance**

- 3.2.1. Contractor shall coordinate its performance with the Director and other persons that the Director designates.
- 3.2.2. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

#### **3.3. Schedule of Performance**

##### **3.3.1. Time of Performance.**

- 3.3.1.1. The Director shall provide Contractor with a written Notice to Proceed specifying a date to begin performance (Start Date). Contractor shall begin its performance under this Agreement as set forth in **Exhibit A** no later than the Start Date. Contractor shall continue to perform diligently until this Agreement is terminated or all services, including follow up testing and replacements, are completed, whichever comes later. Contractor acknowledges that time is of the essence. Contractor understands that the City is prohibited by law from paying for services rendered without or prior to a fully executed agreement.

## **SAMPLE AGREEMENT – SUBJECT TO CHANGE**

### **3.3.2. Extension.**

- 3.3.2.1. If Contractor requests an extension of time to complete Contractor's performance, the Director may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

### **3.4. Reports**

- 3.4.1. Contractor shall submit all reports and progress updates required by the Director and as may be required in **Exhibit A**. At a minimum, Contractor shall submit monthly progress reports to the Director or his or her designee.

### **3.5. Prompt Payment of Subcontractors**

- 3.5.1. Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

### **3.6. Personnel of Contractor**

- 3.6.1. Contractor shall replace any of its personnel or subcontractors whose performance, work, or work product is deemed unsatisfactory at the Director's discretion.

### **3.7. RELEASE**

- 3.7.1. **CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.**

### **3.8. INDEMNIFICATION**

#### **3.8.1. GENERAL/NEGLIGENCE**

- 3.8.1.1. **CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR**



**INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

**3.8.1.1.1. CONTRACTOR’S AND/OR ITS AGENTS’, EMPLOYEES’, OFFICERS’, DIRECTORS’, CONTRACTORS’, OR SUBCONTRACTORS’ (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, “CONTRACTOR”) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

**3.8.1.1.2. THE CITY’S AND CONTRACTOR’S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND**

**3.8.1.1.3. THE CITY’S AND CONTRACTOR’S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**

**3.8.1.1. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR’S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY’S NEGLIGENCE.**

**3.8.2. INTELLECTUAL PROPERTY**

**3.8.2.1. CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY’S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.**

**3.8.2.2. CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY’S PRIOR WRITTEN CONSENT.**

**3.8.2.3. IF ANY INJUNCTION OR OTHER RULING IS ISSUED PROHIBITING, PREVENTING, OR OTHERWISE LIMITING THE CITY’S USE OF THE**

EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS, CONTRACTOR SHALL IMMEDIATELY, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

### **3.9. SUBCONTRACTOR'S INDEMNITY**

**3.9.1. CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.**

### **3.10. INDEMNIFICATION PROCEDURES**

**3.10.1. Notice of Claims.** If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include the following:

- 3.10.1.1. a description of the indemnification event in reasonable detail,
- 3.10.1.2. the basis on which indemnification may be due, and
- 3.10.1.3. the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

### **3.10.2. Defense of Claims.**

3.10.2.1. Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

3.10.2.2. Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel, at the City's sole expense, to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor

## SAMPLE AGREEMENT – SUBJECT TO CHANGE

may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, and (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

### 3.11. Insurance

3.11.1. Risks and Limits of Liability. Contractor shall maintain the following coverage and limits of liability:

Commercial General Liability insurance including Contractual Liability insurance	\$1,00,000 per occurrence; \$2,000,000 aggregate
Worker's Compensation including Broad Form All States endorsement	Statutory amount
Professional Liability	\$1,000,000 per claim/aggregate
Automobile Liability insurance	\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Employer's Liability	Bodily Injury by Accident \$500,000 (each accident); Bodily Injury by Disease \$500,000 (policy limit); Bodily Injury by Disease \$500,000 (each employee)
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$1,000,000.00
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

3.11.2. Insurance Coverage. At all times during the term of this Agreement and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

3.11.3. Form of insurance. The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Bests Financial Size Category of Class VI or better, according to the most current Best's

## SAMPLE AGREEMENT – SUBJECT TO CHANGE

### Key Rating Guide.

- 3.11.4. Required Coverage. The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Agreement provisions. Contactor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies, except professional liability, must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Agreement with a duration of two years after substantial completion.
- 3.11.5. Notice. **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.
- 3.11.6. Other Insurance. If requested by the Director, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor's operations under this Agreement.
- 3.12. Warranties**
- 3.12.1. Contractor should make citizen satisfaction a priority in providing services under this Agreement. Contractor's employees should be trained to be customer-service oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees should be clean, courteous, efficient, and neat in appearance at all times and committed to offering the highest degree of service to the public. If, in the Director's determination, the Contractor is not interacting in a positive and polite manner with citizens, the Contractor shall take all remedial steps to conform to the standards set by this Contract and is subject to termination for breach of contract.
- 3.12.2. Contractor's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Agreement.
- 3.12.3. Contractor represents and warrants that the Deliverables will be warranted against deficiencies in functionality and defects in operation in conformance with the requirements provided in **Exhibit A** of this Contract for a period of one year from the date of Acceptance by the Director.
- 3.12.4. Notwithstanding any inspection and Acceptance by the Director or any provision concerning the conclusiveness thereof, Contractor warrants that all services performed under this Agreement will, at the time of Acceptance, be free from defects in workmanship and conform to the requirements provided in **Exhibit A** of this Agreement. The Director shall give written notice (pursuant to

## SAMPLE AGREEMENT – SUBJECT TO CHANGE

Section 6.7, Notices) of any defect or nonconformance to Contractor within a one-year period from the date of Acceptance by the Director. This notice shall state either (1) that Contractor shall correct or re-perform any defective or nonconforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.

3.12.4.1. If Contractor is required to correct or re-perform, the correction or re-performance shall be at no cost to the City, and any services corrected or re-performed by Contractor shall be subject to this clause to the same extent as work initially performed. If Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise correct or replace with similar services and charge to Contractor the cost to the City for the correction or re-performance, or make an equitable adjustment in the Agreement price.

3.12.5. *[Other warranties to be negotiated and inserted.]*

### **3.13. Ownership and Return of City Data**

3.13.1. The City is, will be, and shall remain at all times the owner of all of the City's information, including but not limited to user information, City-specific data created or generated by either party, materials, processes, and documents (collectively, the "City's Information"). Contractor expressly acknowledges that the City has all right, title, or other ownership interest in the City's Information and Contractor shall not possess or assert any lien or other right against the City's Information.

3.13.2. The City may use and is permitted to use for any purpose any of the City's Information, including data provided by Contractor, if any. At all times, including during the Term of this Agreement, and after the termination or expiration of this Agreement or any licenses or sublicenses Contractor grants to the City, the City retains the right to reveal or extract the City's Information from Deliverables provided by Contractor in connection with this Agreement, and the right to use the City's Information in any way or manner determined by the City. Contractor shall provide a data export tool that is requested or approved by the Director that returns City's Information on demand. Contractor shall not use City's Information for any purpose other than what is expressly specified in this Agreement.

3.13.3. Upon request by the Director at any time during the Term and upon expiration or termination of this Agreement, Contractor shall retain, migrate, or dispose of the City's Information as directed by the Director. Within five (5) days of Contractor's receipt of the Director's written request to retain, migrate, or dispose of the City's Information, Contractor shall notify the Director, in writing, of the estimated storage size of the data to be retained, migrated, or disposed of, and any charges that the City will incur based on the requested task, media type, and method of destruction. Within thirty (30) days of the occurrence of either or both of (a) the Director's written approval of the charges Contractor estimated, or (b) Contractor's receipt of the Director's written request for services for which the City will not incur any charges, Contractor shall perform the following services, to the extent applicable, unless otherwise instructed:

3.13.3.1. deliver the City's Information (in whole or in part, as directed by the Director) and physical media owned or provided by the City to the Director, in the format and on the media reasonably requested by the Director;

3.13.3.2. destroy the City's Information (in whole or in part, as directed by the Director) and

## SAMPLE AGREEMENT – SUBJECT TO CHANGE

provide a notarized statement of destruction to the Director;

3.13.3.3. destroy physical media owned or provided by the City, using secure methods;

3.13.3.4. remove the City's Information (in whole or in part, as directed by the Director) from the hosted database, storage device, or other repository.

### **3.14. Confidentiality and Data Security**

3.14.1. Contractor, its agents, employees, contractors, and subcontractors shall hold all of the City's Information that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the City's Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors that bind them to terms in this Section. The placement of a copyright notice on any of City's Information will not be construed to mean that such information has been published and will not release Contractor from its obligation of confidentiality under this Section. The terms and conditions of this Section shall survive the expiration or termination of this Agreement for any reason.

3.14.2. Upon the Director's request, Contractor shall sign any protective order or other confidentiality agreements required by the City governing Contractor's use of documents related to a litigation or other confidential matter being handled by Contractor.

3.14.3. Contractor shall maintain the security of all of the City's Information. Contractor shall implement and maintain reasonable administrative, technical, and physical controls, safeguards, measures, and procedures to (i) protect and safeguard the privacy, security, integrity, and confidentiality of the City's Information, (ii) prevent, detect, contain, and correct security breaches in, involving, or against the City's Information, and (iii) ensure that the City's Information are not accessed, processed, stored, transmitted, transferred, copied, disposed of, archived, or disclosed contrary to the provisions of this Agreement or applicable laws concerning information technology security, network or data security, and privacy laws. Contractor shall be responsible and liable for the acts and omissions of Contractor's personnel, temporary employees, agents, and subcontractors in connection with the provision of the services required under this Agreement, as if such acts or omissions were Contractor's acts or omissions. With respect to any of Contractor's personnel, temporary employees, agents, and subcontractors who process, store, transmit, access, dispose of, or have access to the City's Information in so far as it relates to Contractor's performance of this Agreement, Contractor shall:

3.14.3.1. Advise these persons of and require that they comply with the provisions of this Agreement applicable to each person, including without limitation, the provisions relating to the privacy, security, integrity, and confidentiality of the City's Information;

3.14.3.2. Require these persons to execute and deliver to Contractor written agreements that are a direct flow-down of, or substantially similar to (or no less restrictive than) the terms of this Agreement, including without limitation, with respect to privacy, security, integrity, and confidentiality of the City's Information; and

3.14.3.3. With respect to Contractor's personnel with access to the City's physical property or premises, Contractor shall advise these persons of applicable visitor policies and

## SAMPLE AGREEMENT – SUBJECT TO CHANGE

require that they comply with them and only access authorized areas.

Pursuant to this Agreement, Contractor shall be responsible for any fraudulent or dishonest acts committed by Contractor's employees, personnel, temporary employees, agents, subcontractors, directors, or officers.

- 3.14.4. United States Restriction. Contractor shall ensure that, at all times, all of the City's Information shall remain in networks, systems, facilities, data centers, gateways, hosting facilities, and cloud facilities physically located solely in the continental United States. Contractor shall not transmit, disclose, have access to, or process City's Information outside of the continental United States. At all times, Contractor shall provide support calls from within the boundaries of the continental United States.
- 3.14.5. SSAE 18 Compliance. Contractor shall maintain an information security program that provides for the security and protection of the City data, including, but not limited to, processes and procedures to respond to security incidents. Contractor will operate in conformance with the physical, technical, operational and administrative measures and protocols regarding data security as set forth in its then current Standards for Attestation Engagements ("SSAE") No. 18 SOC2 Report (or equivalent report), received from its third-party auditors. Contractor will, upon written request, provide City with copies of then-current SSAE No. 18 report issued by its third party independent auditors in relation to the data security policies and procedures designed to meet the requirements set forth in this Agreement.
- 3.14.6. Data Breach. If Contractor learns that any person (including Contractor personnel and third parties) has gained unauthorized access to City's Information, or any person has gained unauthorized access to Contractor's network and/or data storage facilities such that any of City's Information is obtained by an outside party, or the City's Information has otherwise been disclosed to unauthorized parties in connection with this Agreement (other than in the proper performance of those services or support therefor), (each an "Incident"), then Contractor shall promptly (within 48 hours) (i) notify the City Attorney and Director in writing of the nature and extent of the Incident; (ii) conduct an investigation to determine when and, if possible, how the Incident occurred, and then (iii) reasonably assist the City in investigating and assessing the extent and nature of the Incident; (iv) use all reasonable endeavors to promptly remedy the Incident and prevent the occurrence of any similar Incident; and (v) inform the City upon request as to the current status of such endeavors. Contractor shall be liable for such data breach or unauthorized access, including but not limited to, any related costs or expense and any notification required by law or regulation.
- 3.14.6.1. If as a result of Contractor's negligence, any of City's Information is lost or corrupted, Contractor shall restore the data to the previous day's uncorrupted state. Loss or corrupted data means data that is inaccessible, and not merely one that contains inaccurate data due to service defects or other reasons.
- 3.14.6.2. Contractor shall maintain and implement disaster recovery and avoiding procedures to ensure that the Services provided by Contractor are not interrupted during any disaster and the City's Information (including but not limited to user data) is not lost or destroyed during any disaster. For any of the City's Information that is managed, maintained, stored, or hosted by or on behalf of Contractor, Contractor shall execute nightly database or systems backups to a backup server.

**3.15. Use of Work Products**

- 3.15.1. Contractor agrees that all documents drafted or created pursuant to this Agreement are the property of the City. The City owns and may use all Documents, notes, plans, computations, databases, tabulations, exhibits, photographs, reports, drawings, graphs, patent applications, underlying data and other work products that the Contractor prepares or obtains under this Agreement (collectively, the “Work Products”).
- 3.15.2. Contractor warrants that it owns the copyright to the Work Products.
- 3.15.3. Contractor shall deliver the original Work Products to the Director on request.
- 3.15.4. Within five working days after this Agreement terminates, Contractor shall deliver to the Director the original Work Products, and all other files, load files, data exports, and materials Contractor produces or gathers during its performance under this Agreement.
- 3.15.5. Notwithstanding anything to the contrary herein, the Contractor and its subcontractors shall retain their rights to any of their proprietary or previously developed documentation, data, routines, software, and specifications that may be adapted, modified, or provided, in whole or part, as a Deliverable or incorporated into a Deliverable although the City shall receive, at no additional charge, a non-exclusive, non-transferable, limited license to use such proprietary or previously developed items in connection with the use of the Deliverables as a whole for the project.

**3.16. Licenses and Permits**

- 3.16.1. Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation to perform the services under this Agreement. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against its licenses.

**3.17. Compliance with Laws**

- 3.17.1. Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

**3.18. Compliance with Equal Opportunity Ordinance**

- 3.18.1. Contractor shall comply with the City’s Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances.

**3.19. Drug Abuse Detection and Deterrence**

- 3.19.1. It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor’s Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 (“Executive Order”), which is incorporated into this Agreement and is on file in the City Secretary’s Office.



## SAMPLE AGREEMENT – SUBJECT TO CHANGE

3.19.2. Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing (“CCODT”):

3.19.2.1. a copy of its drug-free workplace policy,

3.19.2.2. the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit B**, together with a written designation of all safety impact positions and,

3.19.2.3. if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit C**.

3.19.3. If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit D**. Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

3.19.4. Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor’s employee work force.

3.19.5. Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

### **3.20. Minority and Women Business Enterprises**

3.20.1. In its performance under this Agreement, Contractor shall comply with the City’s Minority and Women Business Enterprise (“MWBE”) programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least \_\_\_\_\_% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City’s Office of Business Opportunities (“OBO”) and will comply with them.

3.20.2. Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

3.20.2.1. \_\_\_\_\_ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's OBO Director (“the Director”).

3.20.2.2. \_\_\_\_\_ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time

## **SAMPLE AGREEMENT – SUBJECT TO CHANGE**

for bringing a cause of action nor the applicable statute of limitations.

3.20.2.3. Within five business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

3.20.2.4. Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

### **3.21. Pay or Play**

3.21.1. The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions.

### **3.22. Anti-Boycott of Israel**

3.22.1. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

### **3.23. Zero Tolerance Policy for Human Trafficking and Related Activities**

3.23.1. The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Agreement within 7 days of Contractor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

### **3.24. Preservation of Contracting Information**

3.24.1. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that this Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Contractor shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or

## **SAMPLE AGREEMENT – SUBJECT TO CHANGE**

city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Contractor shall provide any Contracting Information related to this Agreement that is in the custody or possession of Contractor. Upon the expiration or termination of this Agreement, Contractor shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.

- 3.24.2. If Contractor fails to comply with any one or more of the requirements of this Section, Preservation of Contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Contractor and may terminate this Agreement. To effect final termination, the Director must notify Contractor in writing with a copy of the notice to the CPO. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

### **4. DUTIES OF THE CITY**

#### **4.1. Payment Terms**

- 4.1.1. During the term of this Agreement and subject to the allocation of funds as set out below, the City shall pay for the services and Deliverables Contractor renders under this Agreement in accordance with the terms set forth in **Exhibit A**.

#### **4.2. Expense and Reimbursement**

- 4.2.1. The City will not be responsible for any travel and expenses incurred by Contractor or any subcontractors related to the onsite installation, onsite training and education activities, onsite engineering and integration services, or any other activities related to this Agreement.

#### **4.3. Taxes**

- 4.3.1. The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

#### **4.4. Method of Payment**

- 4.4.1. The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director showing the services and Deliverables provided and the corresponding fees. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

**4.5. Disputed Payments**

- 4.5.1. If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

**4.6. Limit of Appropriation**

- 4.6.1. The City's duty to pay money to Contractor for any purpose under this Contract is limited in its entirety by the provisions of this Section.
- 4.6.2. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$ \_\_\_\_\_ to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies.
- 4.6.3. The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

**NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS**

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ \_\_\_\_\_

- 4.6.4. The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

**4.7. Suspension of Performance**

- 4.7.1. The Director may suspend Contractor's performance under this Agreement, with or without cause, by notifying Contractor in writing. Contractor shall resume work when directed to do so by the Director. The parties may negotiate and mutually agree in writing to a plan to reduce Contractor's stand-by costs during the suspension period. The City shall not grant any compensation or extension of time under this Section if the suspension results from non-compliance of Contractor or its subcontractors with any requirement of this Agreement.

## SAMPLE AGREEMENT – SUBJECT TO CHANGE

### 4.8. Changes

4.8.1. At any time during the Agreement Term, the Director and Contractor may agree to and the Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

4.8.2. The Director will issue the Change Order in substantially the following form:

#### CHANGE ORDER

TO: [Name of Contractor]

FROM: City of Houston, Texas (the “City”)

DATE: [Date of Notice]

SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

[Signature of Director]

4.8.3. The Director may issue more than one Change Order, subject to the following limitations:

- 4.8.3.1. Council expressly authorizes the Director to approve a Change Orders up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.
- 4.8.3.2. If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
- 4.8.3.3. The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

4.8.4. Whenever Contractor receives a fully executed Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order.

## **SAMPLE AGREEMENT – SUBJECT TO CHANGE**

Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The Director's decision regarding a time extension is final.

4.8.5. A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.

4.8.6. Change Orders are subject to the Allocated Funds provisions of this Agreement.

### **4.9. Access to Data**

4.9.1. The City shall, to the extent permitted by law, allow the Contractor to access and make copies of documents (including electronically stored information) in the possession or control of the City or available to it that are reasonably necessary for the Contractor to perform under this Agreement.

4.9.2. The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for the Contractor's use.

### **4.10. No Quantity Guarantee**

4.10.1. This Agreement does not create an exclusive right in Contractor to perform all services concerning the subject of this Agreement. The City may procure and execute agreements with other parties for the same, similar, or additional services as those set forth in this Agreement or any Scope of Services or Change Order.

4.10.2. The City makes no express or implied representations, warranties, or guarantees whatsoever, that any particular quantity, type, task area, or dollar amount of services will be procured or purchased from Contractor through this Agreement or any Scope of Services or Change Order; nor does the City make any express or implied representations, warranties, or guarantees, whatsoever for the amount or value of revenue that Contractor may ultimately derive from or through this Agreement or any Scope of Services or Change Order.

## **5. TERM AND TERMINATION**

### **5.1. Term**

5.1.1. This Agreement is effective on Countersignature Date, and shall remain in effect for five years from the Countersignature Date ("Initial Term"), unless sooner terminated under the provisions of this Agreement.

### **5.2. Renewal**

5.2.1. Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions. If the Director chooses not to renew this Agreement, the Director shall notify Contractor of non-renewal at least 30 days before the expiration of the then-current term.

**5.3. Termination for Convenience by the City**

- 5.3.1. The Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.
- 5.3.2. On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section 4.4 unless the fees exceed the allocated funds remaining under this Agreement.
- 5.3.3. TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

**5.4. Termination for Cause by City**

- 5.4.1. If Contractor defaults under this Agreement, the Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:
  - 5.4.1.1. Contractor fails to perform any of its material duties under this Contract;
  - 5.4.1.2. Contractor becomes insolvent;
  - 5.4.1.3. all or a substantial part of Contractor's assets are assigned for the benefit of its creditors;  
or
  - 5.4.1.4. a receiver or trustee is appointed for Contractor.
- 5.4.2. If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.
- 5.4.3. To effect final termination, the Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this

Agreement.

6. MISCELLANEOUS

6.1. Independent Contractor

- 6.1.1. Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

6.2. Force Majeure

- 6.2.1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.
- 6.2.2. This relief is not applicable unless the affected party does the following: (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and (b) provides the other party with prompt written notice of the cause and its anticipated effect.
- 6.2.3. The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final.
- 6.2.4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.
- 6.2.5. If the Force Majeure continues for more than 14 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**



## **SAMPLE AGREEMENT – SUBJECT TO CHANGE**

6.2.6. Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

### **6.3. Severability**

6.3.1. If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

### **6.4. Entire Agreement**

6.4.1. This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

### **6.5. Written Amendment**

6.5.1. Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

### **6.6. Governing Law and Venue**

6.6.1. This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

### **6.7. Notices**

6.7.1. All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section 1.1 of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

### **6.8. Captions**

6.8.1. Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

### **6.9. Non-Waiver**

6.9.1. If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

6.9.2. An approval by the Director, or by any other employee or agent of the City, of any part of

## **SAMPLE AGREEMENT – SUBJECT TO CHANGE**

Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

### **6.10. Inspections and Audits**

- 6.10.1. City representatives may perform, or have performed, (1) audits of Contractor's books and records that are related to any aspect of this Agreement, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least \_\_\_\_ years after this Agreement terminates. This provision does not affect the applicable statute of limitations.
- 6.10.2. During the Term of this Agreement, the City or its designee is permitted to perform audits of Contractor's environment and the locations where the City's Information is stored, hosted, or resides, as it relates to the receipt, maintenance, use, retention, and protection of the City's Information. Within reasonable timeframes, Contractor shall comply with all reasonable recommendations that request from such inspections, test, and audits.

### **6.11. Enforcement**

- 6.11.1. The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

### **6.12. Ambiguities**

- 6.12.1. If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

### **6.13. Survival**

- 6.13.1. Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

### **6.14. Publicity**

- 6.14.1. Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

### **6.15. Risk of Loss**

- 6.15.1. Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each Product passes from Contractor to the City upon acceptance by the City.

### **6.16. Acceptance and Approvals**

- 6.16.1. Any acceptance or approval by the City, or its agents or employees shall not constitute nor be

## **SAMPLE AGREEMENT – SUBJECT TO CHANGE**

deemed to be a release of the responsibility and liability of the Contractor, its employees, agents, subcontractors, or suppliers for the accuracy, competency, and completeness for any Documents prepared or services performed pursuant to the terms and conditions of this Agreement, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the City, or its agents and employees, for any defect, error or omission in any Documents prepared or services performed by the Contractor, its employees, agents, subcontractors or suppliers pursuant to this Agreement.

### **6.17. Parties in Interest**

6.17.1. This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

### **6.18. Successors and Assigns**

6.18.1. This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

### **6.19. Business Structure and Assignments**

6.19.1. Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent, which shall not be unreasonably withheld. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

6.19.2. Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

### **6.20. Remedies Cumulative**

6.20.1. Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

### **6.21. CONTRACTOR DEBT**

6.21.1. IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, THE CITY CONTROLLER SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO

**SAMPLE AGREEMENT – SUBJECT TO CHANGE**

CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

SAMPLE

**SAMPLE AGREEMENT – SUBJECT TO CHANGE**

**EXHIBIT A  
Scope of Services**

***{TO BE NEGOTIATED AND INSERTED}***

SAMPLE

**SAMPLE AGREEMENT – SUBJECT TO CHANGE**

**EXHIBIT B  
DRUG POLICY COMPLIANCE AGREEMENT**

I, \_\_\_\_\_ as an owner or officer of  
(Name) (Print/Type) (Title)

\_\_\_\_\_ (Contractor)  
(Name of Company)

Have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a Notice to Proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

\_\_\_\_\_  
Date

Contractor Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

**SAMPLE AGREEMENT – SUBJECT TO CHANGE**

**EXHIBIT C**

**CONTRACTOR'S CERTIFICATION  
OF NO SAFETY IMPACT POSITIONS  
IN PERFORMANCE OF A CITY CONTRACT**

I, \_\_\_\_\_  
(Name) (Title)

as an owner or officer of \_\_\_\_\_ (Contractor)  
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in § 5.18 of Executive Order No. 1-31, that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Human Resources if any safety impact positions are established to provide services in performing this City Contract.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

# SAMPLE AGREEMENT – SUBJECT TO CHANGE

## EXHIBIT D DRUG POLICY COMPLIANCE DECLARATION

I, \_\_\_\_\_ as an owner or officer of  
(Name) (Print/Type) (Title)  
\_\_\_\_\_  
(Name of Company) (Contractor)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_.

\_\_\_\_\_ A written Drug Free Workplace Policy has been implemented and employees notified.  
Initials The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

\_\_\_\_\_ Written drug testing procedures have been implemented in conformity with the Mayor's  
Initials Drug Detection and Deterrence Procedures, Executive Order No. 1-31. Employees have been notified of such procedures.

\_\_\_\_\_ Collection/testing has been conducted in compliance with federal Health and Human  
Initials Services (HHS) guidelines.

\_\_\_\_\_ Appropriate safety impact positions have been designated for employee positions  
Initials performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is \_\_\_\_\_.

From	to	the following test has occurred				
	(Start date)	(End date)	Random	Reasonable <u>Suspicion</u>	Post Accident	Total
Number Employees Tested			_____	_____	_____	_____
Number Employees Positive			_____	_____	_____	_____
Percent Employees Positive			_____	_____	_____	_____

\_\_\_\_\_ Any employee who tested positive was immediately removed from the City worksite  
Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

\_\_\_\_\_ I affirm that falsification or failure to submit this declaration timely in accordance  
Initials with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)